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SUPREME COURT, U.S.

NO. 80-456

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GERALD J. THOMPSON, Secretary of the Department of Social and Health Services; ROBERT QUERRY, Chief of the Office of Support Enforcement,
Petitioners,

v.

MAVIS BERRY, BONNIE HADEEN, GERTRUDE PIERCE, GENEVIEVE GALLOW, MAGGIE LEE FERRILL and CAROL POE, on behalf of themselves and others similarly situated,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF WASHINGTON

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondents ask leave to file the attached typewritten Brief In Opposition and to proceed in forma pauperis pursuant to Rule 46 and 28 U.S.C. §1915.

Respondents' affidavits in support of this motion are attached hereto.

Respondents were allowed to proceed in all courts below as representatives of a class of persons similarly affected, without imposition of costs or fees, in accordance with RCW 74.08.080. That statute provides in pertinent part that:

> In the event an appellant feels himself aggrieved by the decision rendered in the hearing provided for in RCW 74.08.070, he shall have the right to petition the superior court for judicial review in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Either party may appeal from the decision of the superior court to the supreme court or the court of appeals of the state: Provided, That no filing fee shall be collected of the appellant and no bond shall be required on any appeal under this chapter....

Respondents believe they are entitled to proceed in forma pauperis to this Court. Adkins v. DuPont, 335 U.S. 331 (1948).

Dated: This 26th day of November, 1980.

PATRICK HENRY McINTYRE
Counsel for Respondents

EVERGREEN LEGAL SERVICES
2018 Smith Tower
506 2nd Avenue
Seattle, Washington 98104

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Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Maggie Lee Ferrill, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to file a typewritten brief in opposition to the granting of a writ of certiorari and to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; and that I believe I am entitled to the relief granted to me by the Supreme Court of the State of Washington.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of review by this Court are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

ANSWER:

I am presently employed by the Port of Seattle, Pier 66, as a janitress. My take-home pay is approximately $696.24 per month. I am presently 62 years of age and hope to be able to work until I am 65 years old. My employer's address is: P.O. Box 1209
Seattle, WA 98111

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

ANSWER:

No.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

ANSWER:

No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

ANSWER:

Yes. I am buying a house for which I pay a $141.00 per month house payment, and a $65.00 per month payment for repairs. I owe approximately $9,000 on the mortgage and approximately $1500 on the repair bill. In addition, the Washington State Department of Social and Health Services has a $1500 lien on the property. I think I have about $45,000 in equity, having made payments since 1968; however, this is my only security of any kind. I also am buying a 1977 Oldsmobile Brougham. The purchase price was approximately $3,900.00 at the date of purchase which was June 15, 1980. I made no down payment and owe about $3,400 on the car to the credit union. I don't believe I could sell the car at a profit.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER:

I am presently living alone and supporting myself.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Maggie Lee Ferrill

MAGGIE LEE FERRILL

SUBSCRIBED AND SWORN TO before me this 24th day of November, 1980.

Patrick McIntyre

NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

NO. 80-456

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GERALD J. THOMPSON, Secretary of the Department of Social and Health Services; ROBERT QUERRY, Chief of the Office of Support Enforcement,
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v.

MAVIS BERRY, BONNIE HADEEN, GERTRUDE PIERCE, GENEVIEVE GALLOW, MAGGIE LEE FERRILL and CAROL POE, on behalf of themselves and others similarly situated,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Genevieve Gallow, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to file a typewritten brief in opposition to the granting of a writ of certiorari and to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; and that I believe I am entitled to the relief granted to me by the Supreme Court of the State of Washington.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of review by this Court are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

ANSWER:

No; March 1971, $586.00 per month

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

ANSWER:

No. My sole source of income is a public assistance (SSI) check of $281.00 per month.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

ANSWER:

Savings account - $100.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

ANSWER:

No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER:

Barbara Gallow, daughter

Marvin Gallow, son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Genevieve Gallow
GENEVIEVE GALLOW

SUBSCRIBED AND SWORN TO before me this 21st day of November, 1980.

Patrick McNiteman
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

NO. 80-456

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GERALD J. THOMPSON, Secretary of the Department of Social and Health Services; ROBERT QUERRY, Chief of the Office of Support Enforcement,
Petitioners,

v.

MAVIS BERRY, BONNIE HADEEN, GERTRUDE PIERCE, GENEVIEVE GALLOW, MAGGIE LEE FERRILL and CAROL POE, on behalf of themselves and others similarly situated,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Bonnie Hedeen, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to file a typewritten brief in opposition to the granting of a writ of certiorari and to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; and that I believe I am entitled to the relief granted to me by the Supreme Court of the State of Washington.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of review by this Court are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

ANSWER:

I am presently employed part time and receive $285.00 per month. My employer is Northwest Manufacturers Associates, 3805 108th N.E., Bellevue, Washington 98004.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

ANSWER:

My only other income is child support of $335 per month for my son. I started to receive this support two months ago.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

ANSWER:

Yes. Checking account - $200.00; the $200.00 is to be used next week for car repairs.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

ANSWER:

Yes. 1972 Toyota -- $1,000 value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER:

Derek H. Smith - son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Bonnie Hedeen
BONNIE HEDEEN

SUBSCRIBED AND SWORN TO before me this 25th day of November, 1980.

Patrick McIntyre
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

NO. 80-456

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GERALD J. THOMPSON, Secretary of the Department of Social and Health Services; ROBERT QUERRY, Chief of the Office of Support Enforcement,
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v.

MAVIS BERRY, BONNIE HADEEN, GERTRUDE PIERCE, GENEVIEVE GALLOW, MAGGIE LEE FERRILL and CAROL POE, on behalf of themselves and others similarly situated,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF WASHINGTON

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Patrick Henry McIntyre, being first duly sworn, depose and say:

That I am the counsel for Respondents, duly admitted to practice before this Court, and that I was involved on behalf of my firm in all proceedings below. I make this affidavit in support of Respondents' motion to file a typewritten brief in opposition and otherwise to proceed in forma pauperis, without being required to prepay fees, costs, or to give security therefore.

That, since the Petition was referred to me, I have personally attempted to contact each of the named Respondents, and have supervised the continuing efforts of other members of my firm to do so.

That, despite dilligent efforts, I am unable at the present time to submit affidavits of Mavis Berry and Carol Poe, although Mrs. Berry has lately been located and is expected to contact us in the near future.

That, according to information supplied by relatives, Mrs. Poe has left the State of Washington.

That I have no basis to conclude that either Mrs. Berry or Mrs. Poe no longer desires to be represented by this firm or that either Respondent lacks an interest in the outcome of these proceedings.

That I also have no basis on which to conclude that either Mrs. Berry or Mrs. Poe is financially able to pay the costs of this proceeding or to give security therefore, although the record reflects that Mrs. Berry voluntarily terminated her receipt of public assistance for some period of time in 1976.

That I will continue to make dilligent efforts to contact Mrs. Berry and Mrs. Poe and, should it become possible to do so, will promptly submit their affidavits or such other information as may be appropriate to the Court.

Patrick Henry McIntyre
PATRICK HENRY McINTYRE

SUBSCRIBED AND SWORN to before me this 26th day of November, 1980.

Joe Bower
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

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Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Gertrude Y. Pierce, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to file a typewritten brief in opposition to the granting of a writ of certiorari and to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; and that I believe I am entitled to the relief granted to me by the Supreme Court of the State of Washington.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of review by this Court are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

ANSWER:

No. I was last employed in October, 1977, at which time I received approximately $475.00 per month in take-home wages.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

ANSWER:

No. My sole source of income has been public assistance. This month I received $515.00 and do not qualify for food stamps.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

ANSWER:

Yes, I have a savings account which contains less than $5.00. I have no checking account.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

ANSWER:

Yes. I own a 1966 Oldsmobile. It is worth less than $250.00.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER:

Toyka Lynn Pierce, daughter, age 17 yrs.
Darin Scott Pierce, son, age 16 yrs.
Clifford Ray Pierce, Jr., son age 13 yrs.

My daughter, Shari Kay Pierce, age 18, and her daughter, Ingrid Elizabeth Pierce, age 3, also reside in my home. Shari receives a partial public asssistance payment as she works part-time. However, she is unable to contribute for other than herself and her child.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Gertrude Y. Pierce
Gertrude Y. Pierce

SUBSCRIBED AND SWORN TO before me this 23rd day of November, 1980.

Patrick McIntyre
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF WASHINGTON

BRIEF IN OPPOSITION

EVERGREEN LEGAL SERVICES

PATRICK HENRY McINTYRE
2018 Smith Tower
516 Second Avenue
Seattle, Washington 98104
(206) 464-5933

Attorney for Respondents

QUESTIONS PRESENTED

1. Whether the Washington regulation defining "cooperation" for purposes of the state's AFDC-related child support enforcement program imposes a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards in violation of the Social Security Act and is therefore invalid under the Supremacy Clause.

2. Whether the Washington regulation, which imposes substantially more onerous recoupment provisions against persons who have received overpayments of AFDC as a result of their having failed to remit or to repay child support payments to the appropriate state agency, than are imposed against AFDC recipients overpaid for other reasons, thereby conflicts with the Federal regulations promulgated under the Social Security Act and is therefore invalid under the Supremacy clause.

3. Whether the Washington regulation, which imposes substantially more onerous recoupment provisions against persons who have received overpayments of AFDC as a result of their having failed to remit or to repay child support payments to the appropriate state agency than are imposed against AFDC recipients overpaid for other reasons, thereby denies equal protection of the laws to such persons in violation of the Fourteenth Amendment to the United States Constitution.

PARTIES

Respondents are correctly identified in the caption with the exception of Bonnie Hedeen, whose surname was misspelled throughout the state court proceedings.

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CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The pertinent text is set forth in Appendix A.

The Social Security Act requires that "...aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals...." [42 U.S.C.§602(a)(10)(1977)]. The pertinent text is set forth in Appendix A.

The Social Security Act authorizes the Secretary of the Department of Health and Human Services to reduce by five percent federal funding to any state which is found to have a child support program which does not meet the requirements of the Act. [42 U.S.C.§603(h); 604(d)(1977)]. The pertinent text is set forth in Appendix A.

The Social Security Act provides that any state dissatisfied with a final determination of the Secretary of the Department of Health and Human Services under 42 U.S.C.§604 may file an appeal with the U.S. Court of Appeals. [42 U.S.C.§1316(a)(3)(1977)]. The pertinent text is set forth in Appendix A.

The Secretary of the Department of Health and Human Services has issued regulations which provide for a hearing and judicial review of his decision to impose a reduction in federal funding. [45 C.F.R. §201.4; §201.7]. The pertinent text is set forth in Appendix A.

The Secretary of the Department of Health and Human Services has issued regulations setting forth the circumstances under which a caretaker relative who fails to meet the eligibility requirements of 45 C.F.R. §232.12 shall "return to money payment status..." [45 C.F.R.§234.60(a)(13)]. The pertinent text is set forth in Appendix A.

The Secretary of the Department of Health and Human Services has issued regulations to govern the means that states participating in the AFDC program may employ to recover overpayments of assistance. [45 C.F.R. §233.20(a)(12)(i)(A); §233.20(a)(12)(i)(f)]. The pertinent text is set forth in Appendix A.

The Secretary of the Department of Health and Human Resources has issued regulations that provide for matching federal funds for any state which makes AFDC benefits to comply with a court order. [45 C.F.R. §205.10(b)(2) and (3)]. The pertinent text is set forth in Appendix A.

A state statute provides that an AFDC parent who does not remit support payments to the state agency incurs a support debt owing to the state. [RCW 74.20.320]. The pertinent text is set forth in Appendix B.

Petitioners have issued state regulations restricting the extent to which current assistance may be withheld for the purpose of recovering overpayments. [WAC 388-44-140(3); WAC 388-44-145]. The pertinent text is set forth in Appendix B.

Other applicable statutes and regulations are set forth in the Petition at pages 37-43. 1/

STATEMENT OF THE CASE

This case was initiated by Respondents to challenge the Washington State Department of Social and Health Services' interpretation of the "cooperation" requirements and sanctions passed by Congress under the Aid to Families with Dependent Children (AFDC) program. Pursuant to its policy, the Department imposed "noncooperation" sanctions against those AFDC recipient

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1/ It should be noted that the Washington State Supreme Court expressly upheld the validity of WAC 388-14-200(2)(d) and WAC 388-14-200(3). See Appendix C to Petition at page 31. Respondents accordingly believe that the fourth question presented by the Petition is improperly framed.

parents or other caretaker relatives, [2] such as Respondents, who had received overpayments of public assistance because of their receipt of child support payments which were not deducted from their AFDC grants. The Department terminated assistance to such persons, thereby reducing the family's grant by the parent's portion of the grant, and named a protective payee to administer the children's portion of the grant. WAC 388-14-200(3). Petition, Appendix F, page 42.

During the period in which assistance was thus terminated, the parent's portion of the grant which was withheld was not credited towards reducing her [3] overpayment. Petition, page 4. Such parents could be returned to money payment status only by signing a repayment agreement with the Department's Office of Support Enforcement (OSE) requiring monthly payments of at least 10% of the amount of overpayment, irrespective of the parent's ability to pay this monthly amount. WAC 388-14-200(4). Appendix F to Petition, page 42. If the parent defaulted on any payments, then she could be returned to money payment status only by paying the entire amount of the overpayment remaining in one lump sum to OSE. Otherwise, she would remain without assistance indefinitely and the children's portion of the grant would continue to be paid indefinitely to the protective payee. WAC 388-14-200(4). Appendix F to Petition, page 42.

The practical application of the policy which Respondents challenged is well-illustrated by the Findings made by the trial court with respect to Respondent, Gertrude Pierce. Although the pertinent findings concerning Mrs. Pierce and other Respondents are set forth in Appendix A to the Petition, at pages 9-11, they

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2 / Some of the Respondents are parents, while others are caretaker relatives. For the sake of convenience and brevity, this brief will utilize "parents" as an inclusive term.

3 / Because most of the parents or caretaker relatives affected are women, as are all named Respondents, the feminine pronoun will be used throughout.

are highly material to the consideration of the questions presented. For this reason and for ease of reference the findings relating to Mrs. Pierce are set forth in full below:

1. Named plaintiffs and class members are former, present, and future AFDC recipients who have been, are being, or may be taken off the AFDC grant, with the remaining portion of the family's grant being paid to a protective payee, including those recipients who have or may sign agreements with the Department's Office of Support Enforcement (OSE) promising to repay the amount of support monies not turned over, because of their failure to turn over or have turned over support payments to OSE.

2. Plaintiff Gertrude Pierce and her four minor children started receiving public assistance benefits under the AFDC program in 1970.

3. Beginning in 1973, Ms. Pierce's former husband began paying $100 per month in child support payments to the County Clerk in California who in turn transferred the funds to the Snohomish County Clerk.

4. Because Ms. Pierce had assigned her child support rights to OSE, the Snohomish County Clerk sent the child support payments directly to OSE beginning in December of 1973.

5. During a brief period in October, 1975, Ms. Pierce was off of public assistance during which time OSE notified the Snohomish County Clerk that the child support payments were to be made directly to Ms. Pierce because Ms. Pierce was no longer on public assistance.

6. On November 7, 1975, Ms. Pierce got back on public assistance and informed OSE of that fact.

7. Not having been informed by OSE, the Snohomish County Clerk continued to send the child support payments directly to Ms. Pierce.

8. When she received the check in December of 1975, Ms. Pierce called the county clerk to inquire about the check.

9 . Ms. Pierce was told that the money was for child support, but was not otherwise told what to do with it although she advised the clerk that she was back on public assistance.

10. Ms. Pierce retained the December, 1975 check and subsequent checks which continued to be sent to her through June, 1976.

11. OSE notified the Snohomish County Clerk that support payments for July and subsequent months were to be sent directly to OSE; such payments have been sent directly to OSE since the notification.

12. The local office sent a notice to Ms. Pierce stating that Ms. Pierce was not "cooperating" with the Department and her needs would be deleted from the grant with the remaining portion of the grant to be paid through a protective payee.

13. Ms. Pierce asked for an administrative hearing challenging the Department's actions and the hearing was held on September 1, 1976.

14. The defendant upheld the local office's action, even though the local office at the fair hearing, conceded that there was no fraud involved and that the payments received by Ms. Pierce were caused by Departmental error in failing to have the Snohomish County Clerk send the child support payments directly to OSE.

15. Ms. Pierce has petitioned for review of the Department's decision to the Superior Court.

16. In accordance with the Department's policy, Ms. Pierce's portion of the grant was not being credited to the debt she allegedly owed until, upon Ms. Pierce's Motion for Stay of Administrative Decision, the Superior Court ordered the defendant to credit Ms. Pierce's monthy portion of the grant to the debt she allegedly owes.

The further findings made by the State trial court show that the regulation in question was applied in the same fashion to the other named Respondents, and to class members, with similar results.

The State trial court held the regulation to be invalid, inter alia, on the ground that it denied equal protection under the State and Federal Constitutions, which decision was affirmed outright by the State Supreme Court. Therefore, Respondents believe that a full appreciation of the contrast between the above-described procedures and the State and Federal regulations governing the recovery of overpayments in all other

situations is highly material to the Court's consideration of the questions presented. These well-established and carefully-defined procedures for recovering overpayments received by AFDC recipients can be briefly summarized. In the case of non-fraudulent overpayments -- those caused by Department error or an innocent mistake by the recipient, as in the case of Mrs. Pierce -- the Department assesses an overpayment against the recipient which becomes a debt owing to the state. However, the Department cannot in such a case recover the debt by reducing the family's AFDC grant or other public assistance benefits such as medical coupons. WAC 388-44-145, Appendix B, page A-7; 45 C.F.R. §233.20(a)(12)(i)(A), Appendix A, page A-4.

In cases where the overpayment is caused by recipient fraud, the Department assesses a debt of 125% of the amount overpaid which may be recovered by reducing the family's grant. WAC 388-44-145, Appendix B, page A-7. Basically, the maximum monthly deduction that can be imposed is 10% of the grant. To determine the exact percentage of the deduction (up to 10%), the Department must first assess the family's situation on a case-by-case basis, "so as not cause undue hardship." WAC 388-44-145(3), Appendix B, page A-7; 45 C.F.R. §233.20(a)(12(i)(f), Appendix A, page A-4.

Had the Department applied these well-established procedures, Mrs. Pierce would not have been subjected to the deletion of her needs from the grant and the distribution of her childrens' assistance through a protective payee. She would instead have continued to receive her full grant along with medical coupons and other assistance, since the overpayment was not occasioned by any fault or fraud on her part. She would have owed a debt to the Department, to be paid when she was no longer in need of assistance, when she would be financially able to do so.

If, on the other hand, the overpayment had resulted from Ms. Pierce's fraud, the Department would then effect recovery by taking mandatory monthly deductions of up to 10% of her grant if to do so would not cause undue hardship to the family. Moreover, 10% of a grant would often be substantially less than 10% of the amount of the overpayment. This is illustrated by the case of class member Carol Poe [4], who was alleged to have received an overpayment of $1,050 and therefore required to pay $105 per month. By way of contrast, 10% of the present [5] grant for a three-person household such as the Poe family is $41.30. [6]

The proceedings below are essentially as set forth in the Petition at pages 3-6. Of particular note is the fact that the case was presented to the State Supreme Court on virtually unchallenged [7] findings of fact, including those to which

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4 / Though Mrs. Poe's case is useful for illustration, it should be noted that none of the Plaintiffs including Mrs. Poe, were found to have engaged in any fraudulent actions.

5 / Precise information concerning the 1976 AFDC grant levels is not readily available. Grants have, however, been increased by a cost of living factor each succeeding year.

6 / Administrative decisions in the cases of various class members, which were presented both to the State trial court and the State Supreme Court, further establish the extent and typicality of this difference in treatment. According to the decision in her case, attached as Appendix C, Class Member Deborah Moran retained child support payments in the total sum of $1,200 in reliance upon advice given her by the Department. Pursuant to its non-cooperation policy, the Department subsequently terminated Mrs. Moran from the AFDC grant, thereby reducing the grant from $270 to $196, and conditioned her future eligibility upon repayment at the rate of $120 per month. At her administrative hearing, Mrs. Moran agreed to repay the $1,200, even though she had been misled by the Department, but noted that she could not possibly do so at the rate of $120 per month when her entire grant, which was the sole source of income for herself and her child, was only $270 per month. The decision held nonetheless that nothing less than $120 per month could be accepted.

7 / As they do here (Statement of the Case, Petition at page 3) Petitioners below challenged only Findings 66 and 70, neither of which is essential to this Court's determination of the questions presented.

reference has been made above. It is also especially significant for purposes of these proceedings to note that the State Supreme Court affirmed the trial court, to use the words of the Petitioners, "without qualification." Statement of the Case, Petition at page 6. The trial court had, in turn held that the challenged regulation violated the Social Security Act, federal regulations promulgated under the Act and the equal protection and due process clauses of the United States Constitution and Washington State Constitution. Conclusions of Law, Appendix A to Petition, at pages 17-18.

As indicated by the Petition (Statement of the Case, at page 5), Petitioners were initially enjoined from imposing the challenged sanctions against any recipient who "fails or has failed to turn over support payments to the Department's Office of Support Enforcement ...." (emphasis added). However, in response to the State's expressed concern that this inadvertently broad language might preclude it from imposing sanctions against recipients who presently have support payments in their possession, Respondents proposed and the trial court has entered an agreed Order amending the Findings, Conclusions, and the Order on Summary Judgment. As amended, these documents now make clear that Petitioners are enjoined from imposing the challenged sanctions only against any recipient who "has failed to turn over support payments ..." The agreed Order, and the pertinent provisions, as amended, are set forth in Appendix D.

As correctly indicated by their complete omission from Petitioners' Statement of Case, various letters directed to the Petitioners by officials of the Department of Health, Education and Welfare [8], (Appendices G, H, and I to the Petition, pages

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8 / That agency has been redesignated the Department of Health and Human Services (D.H.H.S.) and will be so identified in the remaining portions of this brief.

44-51), are not material to the consideration of the questions presented. These letters were not part of the record, were not considered by the trial court in the summary judgment, (Appendix B to Petition, at pages 21-26), and were accordingly not considered by the State Supreme Court. To Respondents' knowledge, and so far as appears from the Petition, D.H.H.S. has neither threatened nor taken any action to withhold any portion of federal matching funds, but rather has indicated that a formal Action Transmittal will be forthcoming in the near future to clarify the federal requirements. Appendix I to Petition, at page 51.

REASONS FOR DENYING THE PETITION

A. THE DECISION OF THE WASHINGTON STATE SUPREME COURT DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

Denial of the Petition at this time is proper because Petitioners have neither claimed nor shown any "conflict with applicable decisions of this Court." Rule 17(1)(c).

As correctly noted by the Washington State Supreme Court, the Social Security Act makes cooperation a condition of AFDC eligibility.[9] Indeed, this is the express purpose and effect of 42 U.S.C. §602(a)(26) (1977).[10] As a result, one's eligibility to receive AFDC is directly determined by her level of cooperation. Whether or not her particular conduct constitutes "cooperation" and therefore fulfills this particular condition of eligibility, depends in turn upon the nature of her actions as measured against those actions required by state and Federal laws which define "cooperation."

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9 / 93 Wn.2d 17, 21, 604 P.2nd 1288 (1980); Appendix C to Petition, at page 31.

10 / Appendix E to Petition, page 37.

The Act also provides, however, that "aid to families with dependent children shall ... be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. §602 (a)(10) [11] (emphasis added). Relying upon and construing the above mandate, this Court has frequently had occasion to review various state laws and regulations restricting eligibility for AFDC. In so doing, it has repeatedly reaffirmed the principle -- necessitated by the Supremacy Clause -- that states may not deny aid to otherwise eligible individuals by imposing conditions of eligibility not contained in the Act or its implementing regulations. King v. Smith, 392 U.S. 309, 20 L.Ed.2d 1118, 88 S.Ct. 2128 (1968); Townsend v. Swank, 404 U.S. 282, 30 L.Ed.2d 448, 92 S.Ct. 502 (1971); Carleson v. Remillard, 406 U.S. 598, 32 L.Ed.2d 352, 92 S.Ct. 1932 (1972).

In Burns v. Alcala, 420 U.S. 575, 43 L.Ed.2d 469, 95 S.Ct. 1180 (1975), this Court said: "King, Townsend, and Carleson establish only that once the federal standard of eligibility is defined, a participating state may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional." Burns v. Alcala, supra at 580; Accord, Miller v. Youakim, 440 U.S. 125; 59 L.Ed. 2d 194, 99 S.Ct.957 (1979).

Adhering strictly to the standards established by this Court, the State Supreme Court carefully examined the state regulations in light of those conditions of eligibility authorized by the Act and by applicable Federal regulations. The court properly concluded that Department regulations requiring assignment of support money received from an absent parent, including the requirement that such payments be remitted to the appropriate state agency, were valid because they were

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11 / The pertinent text is set forth in Appendix A.

entirely consistent with Federal requirements. [12] Finding, however, that the additional regulations [13] pertaining to repayment requirements were "not imposed or authorized by either the Social Security Act or the HEW regulations," the State Supreme Court properly concluded that those regulations were invalid. [14]

Respondents respectfully submit that the constitutional principle previously established by this Court and correctly applied below is an extremely important one with continuing vitality. It is a principle which has served long and well to protect the interests of the needy, while at the same time fairly accommodating important state and federal interests under the Constitution. This case accordingly presents no apparent basis for the Court to reconsider or overrule its prior decisions.

This Court has made it equally clear that a state may not, consistent with the Equal Protection Clause, [15] discriminate against a class of persons unless the "classification bears some rational relationship to a legitimate state purpose." Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 197, 31 L.Ed.2d 768, 92 S.Ct. 1400 (1972).

In the context of this case as it was presented to the courts below, the Department was faced with a situation in which the Respondents had received more money than they were entitled

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12 / 93 Wn.2d 17, 21-2, 604 P.2d 1288; Appendix C to Petition, at page 31.

13 / WAC 388-14-200(4); Appendix F to Petition, at page 42.

14 / 93 Wn.2d 17, 22, 604 P.2d 1288; Appendix C to Petition at page 33.

15 / The pertinent text is set forth in Appendix A.

to receive due to their receipt of child support payments which were not deducted from their grants, whether through their own or the Department's fault. Respondents' cases were thus indistinguishable from other overpayment cases in which a recipient receives more money than she is entitled to receive due to her receipt of wages, Social Security benefits, veterans benefits, or some other type of income. And, as set forth in the Statement of Case above, the responsible federal agency has lawfully established the limited procedures which the states are required to employ in recovering overpayments. As evidenced by the findings of the trial court, [16] the child support payments were in every case being directly remitted to the appropriate state agency when the Department imposed the repayment requirements upon the respective Respondents. The Department's goal, therefore, was to recover the overpayments which had already occurred -- an interest precisely identical to that involved in all other overpayment cases. Yet, the Department did not apply its normal recoupment rules, but instead imposed the far more onerous requirements contained in WAC 388-14-200(4).

No analytical or practical reason has been offered to this Court to justify the different treatment given to Respondents. Nor are any such reasons contained in the record. Once the child support payments are being remitted to the appropriate state agency, the ultimate purpose of the support enforcement provisions contained in the Act has been completely satisfied; further "cooperation" is neither necessary nor possible.

As specifically recognized by the State Supreme Court [17] the AFDC program exists, "...to furnish financial assistance and

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16 / Appendix A to Petition, pages 9-14.

17 / 93 Wn.2d 17, 23, 604 P.2d 1288; Appendix C to Petition at page 32-33.

rehabilitation and other services ... to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life ..." 42 U.S.C §601 (1977). A rule such as WAC 388-14-200(4), requiring immediate repayment of the full amount, utterly defeats this purpose by making it impossible for many parents to retain or to regain eligibility for assistance.

To the extent the decisions below held that WAC 388-14-200(4) is invalid because it is inconsistent with federal recoupment requirements and denies equal protection [18/], Respondents submit that these holdings are consistent with and strongly supported by prior decisions of this Court. This Court has invalidated state regulations because they were inconsistent with the Act, although the regulations did not relate directly to eligibility. Lewis v. Martin, 397 U.S. 552, 25 L.Ed.2d 561, 90 S.Ct. 1282 (1970); Shea v. Vialpando, 416 U.S. 251, 94 S.Ct. 1746, 40 L.Ed.2d 120 (1974). And, even were the Act expressly to authorize the unjustifiable discrimination which the State Supreme Court invalidated, such discrimination could not be permitted to stand under the decisions of this Court. "Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause." Shapiro v. Thompson, 394 U.S. 618, 641, 22 L.Ed.2d 600, 89 S.Ct. 1322 (1969).

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18 / The trial court's decision, which was affirmed by the State Supreme Court, concluded that the regulation also denied equal protection under the state constitution. The significance of this fact is discussed in Section C below.

B. THE QUESTIONS OF FEDERAL LAW WHICH PETITIONERS ASK THIS COURT TO DECIDE WERE NOT DECIDED BY THE WASHINGTON STATE SUPREME COURT. NOR ARE THEY SUFFICIENTLY IMPORTANT OR ADEQUATELY DEVELOPED TO WARRANT SETTLEMENT BY THIS COURT AT THE PRESENT TIME.

In their Petition, petitioners argue that the state of Washington may not be able to meet the requirements of the Social Security Act and federal regulations if the ruling of the Washington State Supreme Court is allowed to stand. Failure to meet federal requirements, in turn, would subject the state to possible fiscal sanctions.

Petitioners misconstrue the State Supreme Court's ruling. The Court's ruling upheld state regulations 19 / which require AFDC recipients to cooperate by assigning their support rights to the state and by remitting any support payments to the state support collection agency. The State Supreme Court found these regulations to be consistent with the Social Security Act and federal regulations which set forth the cooperation requirements imposed on AFDC parents.

The State Supreme Court, however, struck down a state regulation 20 / which required AFDC parents to repay in ten monthly installments the full amount of support retained by the parents, in order to be eligible for AFDC. If the parent could not or did not make the monthly payments, she was deemed to be "not cooperating" and, therefore, was ineligible for AFDC benefits. The State Supreme Court held that such a policy was invalid since it violated the Social Security Act and federal regulations. The Court properly found that neither the Act nor the regulations require immediate repayment as a condition of eligibility for AFDC benefits. Thus, contrary to Petitioners' contention that

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19 / WAC 388-14-200(2)(d) and (3). See Appendix F to Petition, page 42.

20 / WAC 388-14-200(4).See Appendix F to Petition, page 42.

the ruling might force the state to violate federal requirements, the ruling merely requires the state to comply with valid federal requirements.

Petitioners rely upon a June 30, 1980 letter from the Regional Commissioner of D.H.H.S., [21] suggesting that the letter sets forth that agency's formal position on the issues which are sought to be raised. However, even assuming that it was a formal and final statement, Respondents find no conflict between the decision below and the D.H.H.S. letter. With regard to the precise issue ruled on by the Court -- the validity of requiring repayment as a condition of eligibility -- the letter states:

> Further, there is no provision in either Federal law or regulation which permits or requires that an individual be sanctioned for failing to repay child support received directly under either parts A or D of Title IV. [22]

It is significant to note that D.H.H.S. has not taken or threatened any action against the state. The August 8, 1980 letter sent by D.H.H.S. states that any action will have to await an Action Transmittal which is forthcoming and which will clarify the federal requirements. [23]

In the unlikely event that D.H.H.S. were subsequently to conclude that the State Supreme Court's ruling may not be reconciled with federal requirements, the state will be fully entitled to challenge that finding. The federal regulations provide for a hearing to be held no later than 60 days from the time of notice. 45 C.F.R. §201.4, Appendix A, page A-2,3. If the hearing decision is unfavorable to the state, it may appeal to the U.S. Court of

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[21] Appendix H to Petition, at page 47. As pointed out above, this letter was not part of the record below.

[22] Appendix H to Petition, at page 48.

[23] Appendix I to Petition, page 51.

Appeals and ultimately to the U.S. Supreme Court. 42 U.S.C. §1316(a)(3), Appendix A, page A-2; 45 C.F.R. §201.7, Appendix A, page A-3.

In such proceedings, any alleged conflict between the state's plan and federal requirements would be argued extensively, upon a full record, including the forthcoming Action Transmittal. Moreover, the state could raise additional issues which are peculiar to state-federal conflicts under the Social Security Act. For instance, 45 C.F.R. §205.10(b)(2) and (3) provides that federal matching funds under the AFDC program are available to a state for the following items:

> (2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.
>
> (3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order. (emphasis added)

This regulation clearly states that federal matching funds are available for a state to carry out a court order. This regulation, on its face, appears to provide an absolute defense against any possible federal fiscal sanctions against the State of Washington for carrying out a lawful court order.

Moreover, in any hearing and appeals involving the state and D.H.H.S., two additional developments would be considered which were not before the State Supreme Court. Shortly after the briefs were submitted to the State Supreme Court, the Washington Legislature enacted a statute, at the Department's request, which requires the state to treat support monies retained by AFDC parents (and not deducted from their grants) as a debt owing to

the state. RCW 74.20.320. [24] The statute further authorizes the state to recover such debts by using relatively simple and inexpensive but highly effective administrative, as opposed to judicial, collection procedures. The state implemented this approach in late 1979 and it has remained in effect since that time.

The statute's characterization of the support monies retained by the AFDC parent as a debt is completely proper, and it is precisely the position which has been urged by Respondents throughout this litigation. D.H.H.S. has raised no objection to the state using this approach. Thus, all the parties involved -- AFDC parents, D.H.H.S., and the state -- appear to agree with the state's present approach as mandated by RCW 74.20.320. This additional development further suggests that any conflict between the state and D.H.H.S. is highly speculative if not totally unfounded. In any event, this additional factor would certainly be fully considered in the course of the hearings and appeals authorized by the Act and federal regulations.

Yet another development has occurred since the State Supreme Court handed down its ruling. In order to clarify an ambiguity in the trial court's order, Respondents joined the state in seeking amendments to the trial court's findings, conclusions, and order on summary judgment. These amendments [25] make clear that the trial court's injunction does not prohibit the state from imposing the non-cooperation sanctions against AFDC parents who are presently not cooperating. The amendments -- which were made subsequent to the latest D.H.H.S. letter to the state -- thus negate a major concern expressed by D.H.H.S. The injunction

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24 / The statute is set forth in Appendix B, page A-6.

25 / The background of the amendments is discussed more fully in Respondents' Statement of the Case at page 9, supra. The agreed Order, and the pertinent provisions, as amended, are set forth in Appendix D.

as amended is consistent with the State Supreme Court's ruling which authorizes the state to impose non-cooperation sanctions against AFDC parents who are presently not cooperating.

Respondents respectfully submit that the issue of possible federal sanctions against the state, while interesting and not without some importance, is prematurely raised at this time, and has not been adequately developed on this state of the record. The extensive procedures set up by the Act and federal regulations to resolve state - federal conflicts appear to be the most appropriate as well as the best-suited forum in which to develop and consider such an issue, should it actually arise. Although Petitioners assert that the State Supreme Court's ruling addresses an important question of federal law which could affect all states participating in the AFDC program, [26] the State Supreme Court's ruling actually involved a very narrow issue: the validity of one portion of one unique state regulation. Moreover, as explained in the following section of this brief, the ruling appears to have been grounded at least in part upon a state constitutional provision.

It appears doubtful, given these somewhat unusual factors, that the decision of the Washington State Supreme Court will significantly affect prevailing practice in other states, particularly since Petitioners do not suggest that any other state employs the same or similar procedures. For these reasons, Respondents do not believe the case is of sufficient importance to warrant review by this Court.

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26 / Petition, at page 8.

C. THE DECISION OF THE WASHINGTON STATE SUPREME COURT CAN BE RESTED ON AN INDEPENDENT STATE GROUND

As emphasized in Respondents' Statement of the Case, at page 9 supra, the state regulation at issue was held to deny equal protection under the Constitution of the State of Washington. In relevant part, Article 1, §12 of the Washington State Constitution provides:

> Special Privileges and Immunities Prohibited. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Although the Washington Supreme Court has declared the protection extended by this provision to be substantially identical to that provided by the Equal Protection Clause, it has also reserved the power to construe the provision more liberally under certain circumstances. Thus, the Court has said:

> Const. art. 1, § 12, the state's version of the equal protection clause, has been construed in a manner similar to that of the equal protection clause of the Fourteenth Amendment. DeFunis v. Odegaard, 82 Wn.2d 11, 37 n.16, 507 P.2d 1169 (1973), vacated as moot, 416 U.S. 312, 40 L.Ed.2d 164, 94 S.Ct.1704 (1974); Markham Advertising Co. v. State, 73 Wn.2d 405, 427, 439 P.2d 248 (1968). Such construction, however, is not automatically compelled. Const. art. 1, §12 may be construed to provide greater protection to individual rights than that provided by the equal protection clause. Carter v. University of Washington, 85 Wn.2d 391, 536 P.2d 618 (1975).

Darrin v. Gould, 85 Wn. 2d 859, 868, 540 P.2d 882 (1975).

Respondents believe and have argued above that the discrimination in question cannot withstand the appropriate test under the Equal Protection Clause. However, should it be determined that the Equal Protection Clause does not protect the rights in question, it is significant to note that those rights have arguably been preserved under the laws of Washington.

CONCLUSION

The Petition should be denied.

Respectfully submitted.

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APPENDIX A

AMENDMENT XIV, U.S. CONSTITUTION EQUAL PROTECTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law in which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C §602 STATE PLANS

(a)(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals;

42 U.S.C. §603 PAYMENT TO STATES

(h) Notwithstanding any other provision of this chapter, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 602(a)(27) of this title in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).

42 U.S.C. §604 REDUCTION OF PAYMENTS

(d) After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 602(a)(27) of this title, the reduction in any amount payable to such State required to be imposed under section 603(h) of this title shall be imposed in lieu of any reduction, with respect to such failure, which would otherwise be required to be imposed under this section.

42 U.S.C. §1316 JUDICIAL REVIEW

(a)(3) Any State which is dissatisfied with a final determination made by the Secretary on such reconsideration or a final determination of the Secretary under section 304, 604, 804, 1204, 1354, 1384, 1396c, or 1397b of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of Title 28.

45 C.F.R. §201.4 ADMINISTRATIVE REVIEW

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to §201.3(e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements.

Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date of notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see Part 213 of this chapter. A determination affirming, modifying or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such §201.3(e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

45 C.F.R. §201.7 JUDICIAL REVIEW

Any State dissatisfied with a final determination of the Secretary pursuant to §201.4 or §201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

45 C.F.R. §234.60 PROTECTIVE PAYMENTS

(a)(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§232.11 or 232.12 of this chapter by failing to assign rights to support or cooperate in determining paternity and securing support, the State plan must provide that only the requirements of paragraph (a)(7) and (9)(ii) of this sectin will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§232.11 and 232.12 of this chapter.

45 C.F.R. §233.20 RECOUPMENT OF OVERPAYMENTS

(a)(12)(i) Recoupment of overpayments of assistance, including certain overpayments resulting from assistance paid pending hearing decisions.

(A) The State may not recoup any overpayment previously made to a recipient:

(1) Unless the recipient has income or resources exclusive of the current assistance payment currently available in the amount by which the agency proposes to reduce payments: except that,

(2) Where such overpayments were occasioned or caused by the recipient's willful withholding of information concerning his income, resources or other circumstances which may affect the amount of payment, the State may recoup prior overpayments from current assistance grants irrespective of current income or resources.

45 C.F.R. §233.20 RECOUPMENT OF OVERPAYMENTS

(a)(12)(i)(f) Any recoupment of overpayments permitted by paragraph (a)(12)(i)(A)(2) of this section may be made from available income and resources (including disregarded, set-aside or reserved items) or from current assistance payment or from both. If recoupments are made from current assistance payments, the State shall, on a case-by-case basis, limit the proportion of such payments that may be deducted in each case, so as not to cause undue hardship to recipients.

45 C.F.R. §205.10 FEDERAL MATCHING FUNDS

(b) Federal financial participation is available for the following items:

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision of or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

APPENDIX B

RCW 74.20.320 SUPPORT DEBT

Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to 42 U.S.C. §602(A)(26)(a) or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing.

WAC 388-44-140 INVOLUNTARY REPAYMENT OF OVERPAYMENT

(3) Except in cases involving substantiated fraud, it is the policy of the department not to seek involuntary repayment from a former recipient whose income and resources do not exceed departmental standards for determining public assistance eligibility.

WAC 388-44-145 MANDATORY GRANT DEDUCTION

(1) An overpayment shall be recouped by mandatory deduction from future continuing assistance grants only when the department has made a determination that the overpayment resulted from recipient fraud as defined in WAC 388-44-020.

(2) If an overpayment is the result of recipient fraud and if the recipient has cash, bank accounts, or marketable securities which he refuses to use in full or partial satisfaction of an overpayment, a monthly deduction of up to one hundred percent of future grant(s) shall be established until such time as the amount of the grant(s) the recipient would be otherwise eligible to receive equals the value of the cash, bank accounts, or marketable securities which have been withheld.

(3) When deductions have been made pursuant to subsection (2) and the recipient still owes money, or when subsection (2) does not apply:

(a) The department shall, on a case-by-case basis, limit the amount of the monthly deduction so as not to cause undue hardship. The deduction shall not exceed ten percent of the recipient's total monthly requirements unless the recipient requests a larger deduction in writing.

(b) Deleted.

(c) Deleted.

(d) When a recipient is in a nursing home, intermediate care facility, or hospital, a monthly deduction may be made against the clothing and incidental grant to the recipient. A monthly deduction shall not be made against the vendor payment to the nursing home or intermediate care facility.

(e) The grant shall be suspended when the monthly deduction is equal to or more than the grant which would have been paid had no overpayment occurred.

(f) A deduction shall not be made from a noncontinuing general assistance-employable grant to liquidate an overpayment.

(4) A letter confirming the repayment plan shall be sent to the recipient. The letter shall state the percentage of monthly requirements to be deducted. It shall state the amount of the current grant before and after the deduction is made, the date the deduction begins, the total amount of overpayment to be recouped by grant deduction, and the approximate number of months the deduction will be made.

APPENDIX C

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

OFFICE OF HEARINGS

* * * *

In Re:	)	DOCKET NO. 1076A133
DEBORAH KAY MORAN,	)	ADMINISTRATIVE DECISION
Appellant.	)	

A hearing in the above entitled matter was conducted by DAVID HOTCHKIN, a duly qualified Hearings Examiner, on the third day of November, 1976, in Mountlake Terrace, Washington. The Appellant represented herself, and the respondent was represented by Charles Hunter.

ISSUES

1. Appellant appeals the Department determination to terminate her portion of her Aid to Families with Dependent Children (AFDC) assistance grant for alleged non-cooperation with the Office of Support Enforcement.

2. Appellant appeals the Department determination to establish a protective payee for her child's portion of the AFDC assistance grant presently paid to her.

FINDINGS OF FACT

I.

The Appellant requested a fair hearing within thirty (30) days of receipt of the Department decision here appealed.

II.

Appellant has received AFDC assistance for herself and her family, a two person household, since August, 1975.

III.

During most of this same period of time from September,

1975, through August, 1976, Appellant received $100 per month child support.

IV.

When Appellant applied for assistance from the Department Appellant signed an assignment of rights to collect and receive child support for her child to the Department's Office of Support Enforcement. Appellant received no copy of this agreement. She was advised that her grant would be adjusted to compensate for the receipt of these additional funds until Support Enforcement notified her that her full grant was approved. No notice of such approval has been received by Appellant and the Department is offering no evidence to show or imply that such ever was sent.

V.

In August, 1976, the Office of Support Enforcement became aware that these support funds were not being received from Appellant and notified her to pay these same funds to that office.

VI.

Appellant did forward said support money to that office upon being advised of this requirement and continues to do so to the date of this hearing.

VII.

The Office of Support Enforcement, however, levied an additional demand on Appellant requiring her to repay the $1200 support money she collected at not less than $120 per month.

VIII.

Appellant is willing to repay the $1200 support funds she received but insists the $270 per month assistance grant she receives is insufficient to support a repayment schedule of $120 per month.

IX.

Because Appellant is unable and unwilling to repay at $120 per month, the Office of Support Enforcement has notified the Mountlake Terrace Office that Appellant is not cooperating, and that office has proposed the termination of assistance of Appellant's portion of the AFCD grant and establishment of a protective payee for her child's portion.

CONCLUSIONS OF LAW

I.

There is jurisdiction to hear the above entitled proceedings pursuant to Washington Administrative Code (WAC) 388-08-002.

II.

WAC 388-24-109 (Revision 119) requires all applicants for, or recipients of, AFDC assistance to cooperate with the Office of Support Enforcement as required by WAC 388-14-200.

WAC 388-14-200 (2) (Revision 119) requires cooperation in the obtaining of support payments, including immediate remittance of all support payments received by the applicant or recipients from any person to the Office of Support Enforcement. The facts in this case clearly show that Appellant has not cooperated in this regard fully.

III.

WAC 388-14-200 (4) (Revision 119) requires that in the event support monies are not promptly remitted, the Office of Support Enforcement may enter into an agreement to repay the amount owed at payments of not less than 10% of the total amount outstanding. This agreement must be made, clearly, without regard to such individual abilities to pay or consideration of continuing support for others dependent on such income as is available. Therefore, it is necessary for the Office of Support Enforcement to employ this 10% rule and both parties are not free to negotiate an agreement

which takes into consideration such factors as ability to pay and ongoing support obligations.

IV.

Since the Department allegation of non-cooperation has been sustained, it is required that a protective payee be established for the administration of the AFDC grant to Appellant's child. WAC 388-14-200 (Revision 119), WAC 388-24-109 (Revision 119), and WAC 388-33-453 (Revision 120).

DECISION

The Department actions to terminate Appellant's portion of the AFDC grant to her family, and, to establish a protective payee for the administration of her child's portion of the AFDC grant are affirmed.

DATED at Olympia, Washington, this 18th day of January, 1977. Signature of Loren Keely, Acting as Designee and on Behalf of the Secretary, Department of Social and Health Services.

/s/
LOREN KEELY

APPENDIX D

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAVIS BERRY, BONNIE HADEEN, GERTRUDE PIERCE, GENEVIEVE GALLOW, MAGGIE LEE FERRILL and CAROL POE, on behalf of themselves and others similarly situation, Plaintiffs, v. MILTON BURDMAN, Acting Secretary of the Department of Social and Health Services; ROBERT QUERRY, Chief of the Office of Support Enforcement, Defendants.	NO. 823412 ORDER AMENDING SUMMARY JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, by their attorneys, Deborah Maranville and Tony Lee, and Defendants, by their attorney, Walter E. White, Assistant Attorney General, agree that the Summary Judgment and Findings of Fact and Conclusions of Law are to be amended.

The plaintiffs concede that failure by an AFDC recipient to turn over support payments to OSE constitutes failure to cooperate in obtaining support payments as defined in WAC 388-14-200 (2)(d), if the recipients still have the support payments in question.

Based upon this agreement, it is hereby

ORDERED that the Summary Judgment entered on November 14, 1978, is amended by deleting the words "fails or" on page 3, lines 8 - 9 and lines 25 - 26.

IT IS FURTHER ORDERED that the findings of fact and

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Tony Lee
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conclusions of law entered November 14, 1978, are amended by deleting the words "fails or" on page 10, lines 9 - 10 and lines 27 - 28.

DONE IN OPEN COURT this 9 day of Oct., 1980.

Nancy Ann Holman
Judge Nancy Ann Holman

Presented by:

Tony Lee
DEBORAH MARANVILLE
TONY LEE
Attorneys for Plaintiffs

Notice of presentation waived;
approved for entry.

Walter E. White per agreement
WALTER E. WHITE
Attorney for Defendants

CONCLUSIONS OF LAW

4. Defendants' policy of deleting the needs of the caretaker relative from AFDC grant and paying the family's remaining portion to a protective payee because the recipient allegedly or actually has failed to turn over support payments to the Department's Office of Support Enforcement after an assignment of support rights is made, or because the recipient fails or has failed to comply with an agreement promising to pay the Office of Support Enforcement the amount of support retained, violates the Social Security Act (42 U.S.C. §601 et seq), federal regulations promulgated under the Act, and the equal protection and due process clauses of the United States and Washington State Constitutions.

6. Defendants, their successors, agents, and employees are permanently enjoined from deleting the needs of a caretaker relative from the AFDC grant and paying the family's remaining portion to a protective payee because the recipient has failed to turn over support payments to the Department's Office of Support Enforcement, or because the recipient fails or has failed to comply with an agreement promising to pay the Office of Support Enforcement the amount of support retained.

SUMMARY JUDGMENT, PAGE 3

Paragraph 4. ... Defendants' policy of deleting the needs of the caretaker relative from the AFDC, grant and paying the family's remaining portion to a protective payee because the recipient allegedly or actually has failed to turn over support payments to the Department's Office of Support Enforcement after an assignment of support rights has been made, or because the recipient fails or has failed to comply with an agreement promising to pay the Office of Support Enforcement the amount of support retained violates the Social Security Act (42 U.S.C. §601 et seq), federal regulations promulgated under the Act, and the equal protection and due process clauses of the United States and Washington State Constitutions.

Paragraph 6. Defendants, their successors, agents, and employees are permanently enjoined from deleting the needs of the caretaker relative from the AFDC grant and paying the family's remaining portion to a protective payee because the recipient has failed to turn over support payments to the Department's Office of Support Enforcement or because the recipient fails or has failed to comply with an agreement promising to pay the Office of Support Enforcement the amount of support retained.